

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
(Southern Division)

PINNACLE PIZZA COMPANY, INC.,  Plaintiff,  v.  LITTLE CAESAR ENTERPRISES, INC., et al.,  Defendants.	Case No. Civ 04-4170 Hon. Karen E. Schreier  LITTLE CAESAR ENTERPRISES, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON ITS COUNTERCLAIM
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Defendant Little Caesar Enterprises, Inc. (“LCE”) filed a counterclaim alleging that plaintiff Pinnacle Pizza Company, Inc. (“Pinnacle”) breached its Franchise Agreement with LCE by challenging the ownership and validity of LCE’s Proprietary Mark “HOT-N-READY.”

The court in Dkt 222 held that “HOT-N-READY” is a proprietary mark of LCE. The court in Dkt 222 also denied Pinnacle’s motion for summary judgment on the counterclaim.

LCE now moves for partial summary judgment on the counterclaim, pursuant to Fed. R. Civ. P. 56, as more fully explained in the accompanying brief and statement of material facts.

LCE requests that the court grant the motion and hold as follows:

A. Pinnacle breached the Franchise Agreement by contesting the ownership and validity of the Proprietary Mark Hot N’ Ready;

B. Pinnacle contested the ownership and validity of the Hot N’ Ready mark by filing suit against LCE, which required LCE to engage attorneys and incur fees for its defense;

C. LCE’s attorneys fees and costs incurred in the defense of the Hot N’ Ready mark is the measure of LCE’s damages for Pinnacle’s breach of § V.A.2. of the Franchise Agreement;

D. LCE shall file a motion setting forth the attorneys fees and costs incurred in the

defense of the Hot N' Ready mark, and proof of their reasonableness, pursuant to a briefing schedule to be set by the court.

Dated: August 22, 2008

s/ Lisa Hansen Marso

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Filed Electronically

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